

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 102 OF 2012

REPUBLIC.....STATE

VERSUS

MARGARET KUKUTIE NAIRENGE.....ACCUSED

RULING

1. This is an application by the defence counsel for bond for the accused person in an offence of murder under **S.203** as read with **S.204** of the **Penal Code**, Chapter 63 Laws of Kenya. The Constitution of Kenya, under article **49(1)(h)** permits the release of the accused on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.

2. The defence cites the probation report, Ref No. TRM/PBR/08/2014. The reports admits that the community in which the murdered husband came from, and thus the wife- the accused's marital home is, and would be very hostile to the accused, may be molested and even harmed if she goes back to her matrimonial home. The report suggests that, in view of this, there is an arrangement to have the accused be accommodated and her maternal or her maiden home.

3. However, the investigating officer gives several compelling reasons why the accused despite the probation report should not be granted bond. That is:

- i. *The accused would temper with the witnesses, and thus intervene with the evidence in her case, one such witness is her own child.*
 - ii. *If released the accused's own life will be in danger especially at her matrimonial home, which situation is exacerbated by the fact that the accused is a Kisii and the victim- her husband – is a maasai.*
3. *The accused if convicted upon trial would suffer a maximum sentence of death as provided by the law- hence a high probability she could abscond and go into hiding.*

4. I have taken note of both submissions by both counsels. Weighing one thing against the other, I deny bond to the accused for now and urge the defence counsel to re-apply for bond on behalf of the accused when tempers have cooled down and, emotions have subsided. The court will in its discretion, reconsider the application, most likely positively in favour of the accused. This refusal should not be taken negatively, it is largely, perhaps for the interest of the accused person. The court does not want harm to come to the accused prematurely. Freedom to the accused may attract harm to her.

5. Orders accordingly.

Dated and delivered at **KISII** this 8th day of October, 2014

C.B. NAGILLAH,

JUDGE.

In the presence:-

Mr. Otieno for the state

Mariari holding brief Sagwe for the accused

Edwin Mongare Court Clerk.